



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

| APPLICATION NO.                                                                                               | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------------------------------------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 09/770,473                                                                                                    | 01/29/2001  | Michel Philippe      | 05725.0834          | 6832             |
| 22852                                                                                                         | 7590        | 06/30/2006           | EXAMINER            |                  |
| FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER<br>LLP<br>901 NEW YORK AVENUE, NW<br>WASHINGTON, DC 20001-4413 |             |                      | BADIO, BARBARA P    |                  |
|                                                                                                               |             | ART UNIT             | PAPER NUMBER        |                  |
|                                                                                                               |             |                      | 1617                |                  |

DATE MAILED: 06/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                         |                     |  |
|------------------------------|-------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b>  | <b>Applicant(s)</b> |  |
|                              | 09/770,473              | PHILIPPE ET AL.     |  |
|                              | <b>Examiner</b>         | <b>Art Unit</b>     |  |
|                              | Barbara P. Badio, Ph.D. | 1617                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 4-60 is/are pending in the application.
  - 4a) Of the above claim(s) 31-59 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,4-30 and 60 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**Final Office Action on the Merits**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Status of the Application***

2. Claims 1 and 4-60 are pending in the present application. Claims 31-59 stand withdrawn from further consideration as being drawn to a nonelected invention. Claims 1 and 4-30 stand rejected as indicated below.

***Claim Objections***

3. Claims 4 and 5 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

The instant claims recite R<sub>1</sub> is C<sub>1-40</sub> hydrocarbon-based radicals whereas parent claim 1 recites C<sub>8-40</sub>.

***Claim Rejections - 35 USC § 112***

4. **The rejection of claims 1 and 4-30 under 35 USC 112, second paragraph is withdrawn.**

***Claim Rejections - 35 USC § 102***

5. The rejection of claims 1, 4-10, 12-15, 25-27 and 30 under 35 USC 102(e) over Thunemann (US 6,395,284) as evidenced by Aldrich (1996-1997) is withdrawn.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 4-30 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Philippe et al. (WO 99/49837, English translation US 6,656,458).

Philippe et al. teaches polyaminoacid derivatives and their use in treating keratinous fibers (see the entire article, especially Abstract, col. 1, line 53 – col. 2, line 44; Examples 1-16). The reference teaches compositions containing between 0.001% and 30% of the compounds and utilization in shampoos with the addition other cosmetically or dermatologically acceptable additives such as antimicrobial agents and anti-dandruff agent (see col. 3, lines 55-63; col. 4, lines 34-41).

The instant claims differ from the reference by reciting the treatment of seborrhea of the skin and scalp, dermatological disorders associated with seborrhea and dermatological disorders associated with *Propionibacterium acnes* and

*Propionibacterium granulosum*. However, addition of the prior art compound to shampoos as taught by Philippe would inherently treat the scalp for any disorders associated with seborrhea as recited by the instant claims. Therefore, the claimed invention is *prima facie* obvious.

### **Conclusion**

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Telephone Inquiry***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barbara P. Badio, Ph.D. whose telephone number is 571-272-0609. The examiner can normally be reached on M-F from 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Barbara Padio*  
Barbara P. Badio, Ph.D.  
Primary Examiner  
Art Unit 1617

BB  
June 26, 2006